

§ 242.13

Health and Human Services and the regulations of the applicable state governing the operation and reimbursement of hospitals. A hospital that is under investigation by any state or federal agency for statutory or regulatory violations is not eligible so long as the investigation is unresolved, unless HUD determines that the investigation is minor in nature; that is, the investigation is unlikely to result in substantial liabilities or to otherwise substantially harm the creditworthiness of the hospital.

§ 242.13 Parents and affiliates.

As a condition of issuing a commitment, HUD may require corporate parents, affiliates, or principals of the proposed mortgagor to provide assurances, guarantees, or collateral to protect HUD's interests. The Commissioner may also require financial and operational information on the parent, other businesses owned by the parent, or affiliates of the proposed mortgagor and may also require a parent or affiliate to be regulated by HUD as to certain actions that could impact on the insurance of a mortgage loan for the benefit of the hospital.

§ 242.14 Mortgage reserve fund.

As a condition of issuing a commitment, HUD shall require establishment of a Mortgage Reserve Fund (MRF). The mortgagor shall be required to make contributions to the MRF such that, with fund earnings, the MRF will build to one year of debt service at 5 years following commencement of amortization, increasing thereafter to 2 years of debt service on and after 10 years following commencement of amortization according to a schedule established by HUD, unless HUD determines that a different schedule of contributions is appropriate based on the mortgagor's risk profile, reimbursement structure, or other characteristics. In particular, hospitals that receive cost-based reimbursement may be required to have MRFs that build to more than 2 years of debt service. Expenditures from the fund are made at HUD's sole discretion or in accordance with the mortgagor's MRF Schedule. Upon termination of insurance, the balance of the MRF shall be returned

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to the mortgagor, provided that all obligations to HUD have been met.

§ 242.15 Limitation on refinancing existing indebtedness.

Some existing capital debt may be refinanced with the proceeds of a section 242 insured loan; however, the hard costs of construction and equipment must represent at least 20 percent of the total mortgage amount.

Subpart B—Application Procedures and Commitments

§ 242.16 Applications.

(a) *Application process*—(1) *Market need*. The approval process entails a determination of the market need of the proposal and stresses, on a market-wide basis, the impact of the proposed facility on, and its relationship to, other health care facilities and services (particularly other hospitals with mortgages insured under this part and hospitals that have a disproportionate share of Medicaid and uninsured patients or provide a substantial amount of charity care); the number and percentage of any excess beds; and demographic projections. Generally, Section 242 insurance may support start-up hospitals or major expansions of existing hospitals only if existing hospital capacity or services are clearly not adequate to meet the needs of the population in the service area.

(i) If the state has an official procedure for determining need for hospitals, HUD shall require that such procedure be followed before the application for insurance is submitted, and that the application document that need has also been established under that procedure.

(ii) The following factors are relevant in evaluating market need for the project and should be addressed, as applicable, in the study of market need and feasibility submitted with the application. Because each hospital presents a unique situation, there is no formula or cutoff level that applies to all applications:

- (A) Service area definition;
- (B) Existing or proposed hospital;
- (C) Designation as sole community provider, Critical Access Hospital, or rural referral center;